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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 627

WAREHOUSEMEN'S UNION, LOCAL 117, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR,

Petitioner,

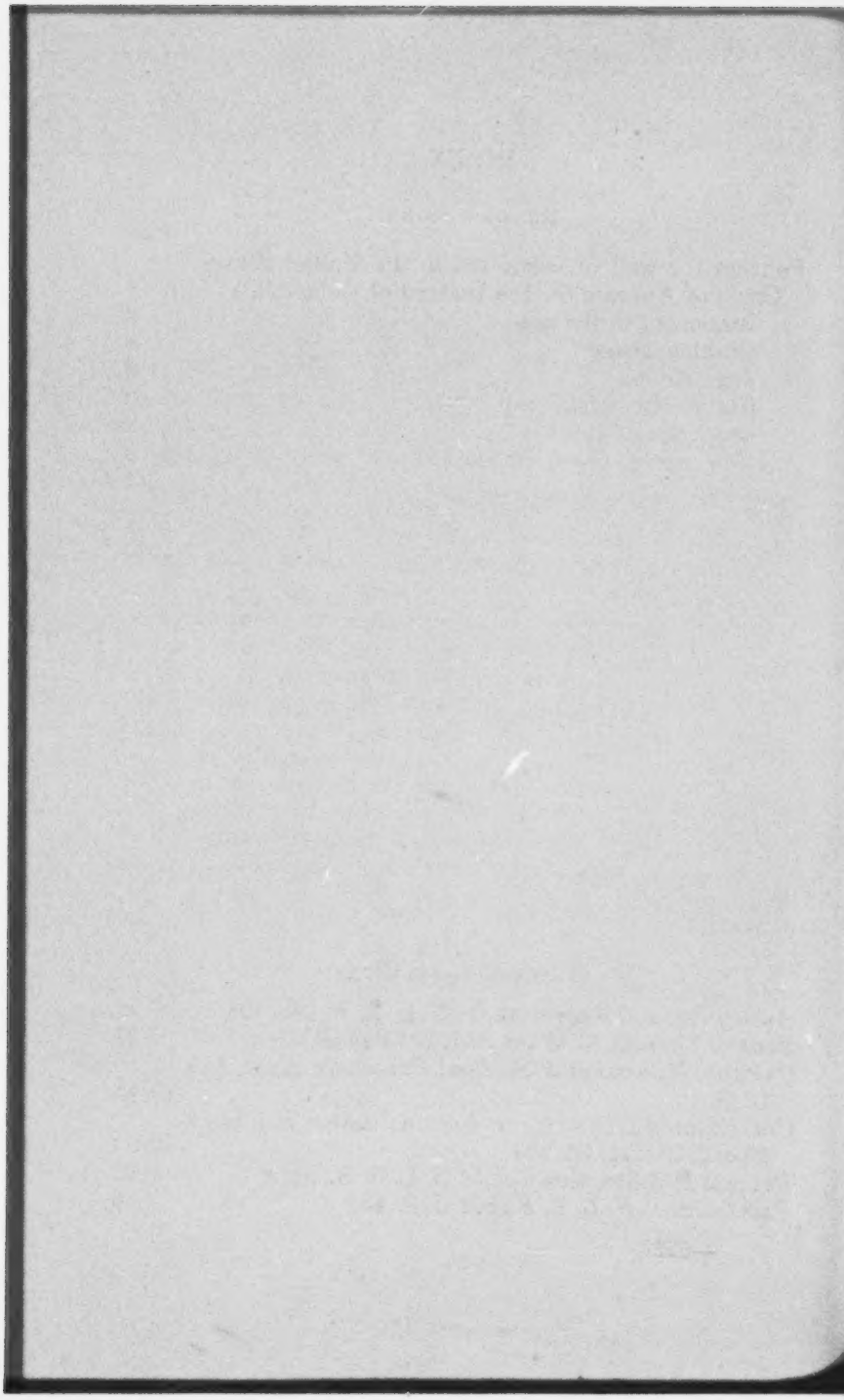
vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF THEREON.

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WAREHOUSEMEN'S UNION, LOCAL 117, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR, *Petitioner,*

vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable the Justices of the Supreme Court of the United States:

The petition of Warehousemen's Union, Local #117, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia, rendered

on May 5, 1941, in the case entitled "Warehousemen's Union, Local 117, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor v. National Labor Relations Board; National Labor Relations Board v. McKesson & Robbins, Inc., McKesson-Stewart-Holmes Drug Division; McKesson & Robbins, Inc., Blumauer Frank Drug Division; and William J. Wardall, Trustee in Bankruptcy", affirming an order of the National Labor Relations Board dated January 23, 1941.

Statement of the Case.

Petitioner, Warehousemen's Union, Local 117, (hereinafter called the Teamsters) is an unincorporated association doing business as a labor organization. It is affiliated as a local with the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, an international labor organization affiliated with the American Federation of Labor (R. 504).

This case is an appeal from a divided decision of the United States Court of Appeals for the District of Columbia affirming an order of the National Labor Relations Board directed against McKesson & Robbins, Inc., a wholesale drug company incorporated under the laws of the State of Maryland, operating a large number of warehouses throughout the United States (R. 502-503). The order of the Board adversely affected petitioner in that it had entered into a collective bargaining contract covering the employees of two of the Company's warehouses located in Seattle, Washington, which contract the Board had directed the Company to disregard. Moreover, the Board had ordered the Company not to recognize petitioner as the representative of any of its employees in these warehouses (R. 528).

The order and decision of the Board was dated January 23, 1940. The case before the Board was entitled "In the Matter of McKesson & Robbins, Inc., and International Longshoremen & Warehousemen's Union, Local No. 9, District 1, affiliated with the C. I. O.", 19 N. L. R. B. 85 (R. 498-529) and arose upon charges filed by International Longshoremen & Warehousemen's Union, Local No. 9, District 1, affiliated with the C. I. O. (hereinafter called the C. I. O.). These charges alleged in substance that the Teamsters did not represent a majority of the employees in the two warehouses in question as required in Section 8(3) of the National Labor Relations Act at the time the collective bargaining contract containing closed-shop provisions was entered into, and that accordingly discharges under such closed-shop contract were in violation of the Act (R. 498). As will hereafter be seen, these charges were filed by the C. I. O. when a petition for representation previously filed by it was pending and were pressed only after the Teamsters had won an election conducted pursuant to such petition by the Board, in which election the C. I. O. had participated without protest and which the Board had conducted with full knowledge of all of the facts constituting the alleged unfair practices and with full knowledge of the pendency of the foregoing charges.

The alleged unfair practice—contracting with a minority group—on which the Board order was predicated arose from the following circumstances:

During the year 1936 a dispute concerning jurisdiction and right to organize employees of inland warehouses arose between the International Brotherhood of Teamsters and the International Longshoremen's Association, both International organizations affiliated with the American Federation of Labor. This dispute, known generally as a "jurisdictional dispute", represented efforts of the two labor organizations to secure a livelihood for their respective

members (R. 505). The dispute was national in scope, affecting all owners of inland warehouses (R. 243, 259). McKesson & Robbins became involved in the dispute through five of its West Coast warehouses. We are concerned with only those two of these warehouses—namely, McKesson-Stewart-Holmes Drug Division and Blumauer Frank Drug Division—which were covered by the contract abrogated by the Board. The two locals competing for membership at these warehouses were the petitioner and Warehousemen and Cereal Workers' Local Union 38-117, affiliated with the International Longshoremen's Association. As a result of the dispute and the consequent striking and picketing these five warehouses were closed down and remained closed from January, 1937, to June, 1937, at a great loss to the public, the employees and the employer (R. 504-505). They were reopened in June at a considerable cost to the employer (who had, in the meanwhile, transferred operations elsewhere) (R. 398) through the efforts of a "Citizens Committee", consisting of civic leaders in Seattle (R. 505). This Committee sponsored a Truce Agreement, which was signed not only by the unions involved but by each of the employees employed at the various warehouses, and was agreed to by the employer (R. 436-438, 508).

The meaning and intent of this agreement is one of the principal issues in this case, for it was in reliance on this agreement that the employer and the Teamsters later entered into the collective bargaining contract which the Board ordered disregarded. Briefly, the agreement provided that the employees would return to work under their then existing affiliations, the parties to await the decision of the American Federation of Labor Convention resolving the conflicting jurisdictional claims of the International Unions. The unions were to maintain a hands-off policy until that time, and all parties specifically agreed

to abide by the decision of the Convention as a means of finally settling the dispute (R. 436-438). At the time the Truce Agreement was entered into the imminent probability that the I. L. A. local would secede from the International Longshoremen's Association to go to the C. I. O. was well known to all the parties (R. 508). However, the agreement signed by the parties at the two warehouses in question contained no proviso covering that probability, the commitments to abide by the Convention decision being unconditional. At the three other warehouses the Truce Agreement was supplemented by an express commitment to abide by the decision, regardless of a change in affiliation, but through inadvertence this implementing memorandum was never presented to the employees at the two warehouses in question (R. 507-508).

In August of 1937, Warehousemen and Cereal Workers' Local Union No. 38-117, along with several other I. L. A. locals on the West Coast, seceded from the I. L. A. and became International Longshoremen & Warehousemen's Union, Local No. 9, District 1, affiliated with the C. I. O. (R. 383-386). The I. L. A. itself, however, retained its affiliation with the American Federation of Labor as an international organization and was not appreciably affected by the secession of the West Coast locals (R. 252-253).

At the October Convention of the American Federation of Labor, attended by delegates of the International Brotherhood of Teamsters and the International Longshoremen's Association, the Convention sustained the contentions of the Teamsters' organization (R. 323, 509). Within two weeks petitioner local notified the employer of the Convention decision and demanded a closed-shop contract, relying for its necessary majority on the commitments made by the individual employees to abide by the Convention decision (R. 401). The employer, likewise relying on the agreement, signed the contract on November 15, 1937,

and some sixteen employees who refused to change affiliation were discharged (R. 38-40, 44, 47, 48, 52-53, 140-142, 299, 316). Neither the C. I. O. union nor the individual employees signing the Truce Agreement had notified the employer or the Teamsters of any intention not to live up to the agreement following the secession in August (R. 345).

Shortly previous to the signing of the contract—on October 28th—the C. I. O. filed a petition for representation under Section 9 of the Act (R. 514). The Board conducted hearings upon such petition from November 18th through November 22, 1937 (5 N. L. R. B. 70, 72), and at these hearings all of the evidence respecting the making of the closed-shop contract of November 15th and the Truce Agreement of June was brought forth on the question of whether the contract constituted a bar to an election (R. 239, et seq.). At the conclusion of the hearing before the Trial Examiner, the C. I. O. filed its charges upon which the present order was subsequently based (R. 209).

A decision in the Representation case was not reached by the Board until February 4, 1938 (5 N. L. R. B. 70). In that decision the Board, upon reasoning similar to that later to be employed by it in finding the company guilty of unfair labor practices, found that the closed-shop contract and the circumstances of the making of the contract did not constitute a bar to an election (5 N. L. R. B. 70, 81). It ordered an immediate election, but made eligible to vote in that election only employees who were on the payroll the week of October 28, 1937, a date two weeks prior to the making of the closed-shop contract (5 N. L. R. B. 70, 86). This election was voluntarily participated in by all parties, the C. I. O. making no protest because of the existence of the closed-shop contract or of the circumstances surrounding the making of it, or because of the existence of any claimed or alleged unfair practices on the part of the com-

pany (R. 198). The election resulted in a vote of 32 in favor of the Teamsters' Union, and 27 in favor of C. I. O. Local No. 9. The Regional Director, who conducted the election for the Board, recommended to the Board that the Teamsters' Union be certified as exclusive bargaining agent (R. 200-201). The Board took no action upon such recommendation, although repeatedly urged to do so. In July, 1938, five months after the election, the Board issued a complaint against McKesson & Robbins, Inc., based upon the charges filed November 23, 1937 (R. 211).

A hearing on this complaint was held in September, 1938. In January, 1940, the Board issued a Decision and Order finding the company had violated sections 8 (1) and 8 (3) of the Act, and ordering the Company not only to cease giving effect to the Teamsters' closed-shop contract but also to withdraw all recognition from the Teamsters' Union (R. 498, *et seq.*). This was ordered in spite of the results of the election which the Board itself had ordered and conducted. The Board also ordered the company to reinstate certain of those employees who had been discharged on November 17th (R. 527-8-9). The Board found that the Truce Agreement was intended to be inoperative in the event of secession, and held it therefore constituted no authorization or basis for the closed-shop contract (R. 518).

The petitioner thereupon appealed from this order as an aggrieved party by petition for review, and the Board cross-petitioned for enforcement of its order against the employer (R. 1, 13). The court below, in a two to one decision, dismissed petitioner's petition for review and granted the Board's order of enforcement, with a slight modification not affecting petitioner's position. Chief Justice Groner dissented. Petitions for rehearing filed by both petitioner and McKesson & Robbins on May 20, 1941, were denied on June 21, 1941 (R. 598).

Opinion Below.

The decision and order of the Board are reported in 19 N. L. R. B. 778 and appear on pages 497-530 of the record. The opinion of the court below is reported in 121 F. (2d) 84 (Adv. Sheets). It appears in the record at R. 543, *et seq.*

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended and under Sec. 10 (f) of the N. L. R. A. The decree of the United States Court of Appeals for the District of Columbia was rendered May 5, 1941, and petition for rehearing was filed May 20, 1941, and denied June 21, 1941.

Statute Involved.

The statute involved is the National Labor Relations Act, 29 U. S. C. A., Sections 151, *et seq.* The pertinent provisions of the Act are Section 7, Section 8 (1) and 8 (3) and Section 9 (c). These provisions are set forth in the Appendix.

Questions Presented.

Three fundamental issues are involved in this appeal. They are: (1) did the Board act arbitrarily in ordering an election voluntarily participated in by all parties and then, on the basis of facts known to it at the time the election was ordered, repudiating the result; (2) was it the intent of the Truce Agreement, pursuant to which the closed-shop contract was made, that the parties abide by the American Federation of Labor Convention decision regardless of the subsequent change in affiliation of the I. L. A. local, the commitments to abide being unconditional although all parties knew of the probability of the contingency occurring; (3) do the facts or any policy of the Act warrant an order

that the employer refrain from dealing with or recognizing the Teamsters as the representative of *any* of its employees there being no finding or charge that the Teamsters did not validly represent at least *some* employees.

Reasons Relied On for Allowance of Writ.

1. This case presents an important question concerning the existence or extent of an asserted power of the National Labor Relations Board, under the National Labor Relations Act, arbitrarily to disregard a prior representation proceeding conducted by it under Section 9 of the Act in a subsequent unfair practice proceeding conducted by it under Section 10 of the Act, involving the same parties, where the principal issue in both cases was identical, and to repudiate, on the basis of facts previously known to it, the results of an election ordered by it pursuant to the representation proceeding and voluntarily participated in by all of the parties. The action of the Board in this case is assertedly contrary to the provisions of the National Labor Relations Act and in excess of the authority conferred upon the Board thereunder, and the question of the validity of the Board's attempted exercise of power in this case has not been, but should be, settled by this Court. It is of obvious importance to all labor organizations to ascertain the extent of the Board's power to repudiate its own elections, and it is of obvious interest to the general public to ascertain whether industrial peace can be insured by the procedure adopted by the Board in this case. Further, the decision of the majority below in upholding the procedure of the National Labor Relations Board in ordering an election and then repudiating it without rhyme or reason sanctions a departure by the National Labor Relations Board from the accepted and usual course of judicial procedure such as to call for an exercise of this Court's power of supervision.

2. The court below in its interpretation of the Truce Agreement as not being binding in the event of secession, thus inserting into a written contract a proviso which might have been but was not inserted by the parties, has decided an important question of local law regarding contract interpretation in conflict with applicable State court decisions, as well as in conflict with applicable leading decisions of this Court and in conflict with leading decisions of other circuit courts of appeal on the same matter. These decisions are *Chicago, Milwaukee & St. Paul Railway* v. *Hoyt*, 149 U. S. 1; *Johnson* v. *Igleheart Bros.*, 85 Fed. (2d) 4; and *McBride* v. *Callahan*, 173 Wash. 609, 24 Pac. (2d) 105, all of which hold that where there are known contingencies affecting performance which might have been but were not provided against in a written contract the parties are bound by the unconditional commitments. In the interest of justice and to correct manifest error, as well as in the interest of harmonizing the decisions of the circuit courts concerning questions of contract interpretation, it is necessary that the failure of the court below and of the Board to apply elementary principles of contract construction be remedied by this Court.

3. The Board's order directing the employer not to deal with the Teamsters as the representative of *any* of its employees, although the Board found the Teamsters represented at least *some* of such employees, and the only unfair practice of the employer was dealing with the Teamsters as representative of *all* its employees, is punitive, has no support in factual findings, and effectuates no policy of the Act. The decision below sustaining such order is in conflict with the decision of this Court in *Consolidated Edison Co.* v. *National Labor Relations Board*, 59 Sup. Ct. 206, and is manifestly error. The determination of whether the Act permits the Board to deny a labor

organization the right to represent *any* of its members under the circumstances of this and similar cases is of utmost importance to all labor organizations. The question has not been, but should be, settled by this Court.

Prayer.

Wherefore, the petitioner respectfully prays that a writ of certiorari issue to review the decree of the United States Court of Appeals for the District of Columbia, entered on May 5, 1941, affirming an order and decision of the National Labor Relations Board, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just and your petitioner will ever pray.

WAREHOUSEMEN'S UNION, LOCAL 117, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR,

Petitioner,

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Dated this 19th day of September, 1941.